CASES ADJUDGED

IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA

AT

NOVEMBER TERM, 1936.

ANTHONY K. WATSON, Plaintiff-in-Error, *v.* H. BUCAMIL and his Honor E. H. SHANNON, Judge of the Circuit Court of the Fifth Judicial Circuit, Defendants-in-Error,

And

JOSEPH S. TOOMEY, JAMES S. HEUSTON, DOCK E. TITLER, for his wife MARY VICTORIA TITLER, Plaintiffs-in-Error, *v.* ALBERT D. PEABODY, Territorial Attorney, and His Honor WILLIAM H. BLAINE, Judge of the Provisional Monthly and Probate Court of Marshall Territory, Defendants-in-Error.

WRIT OF ERROR TO THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT, GRAND CAPE MOUNT COUNTY IN CASE NUMBER ONE. WRIT OF ERROR TO THE PROVISIONAL MONTHLY AND PROBATE COURT OF MARSHALL TERRITORY IN CASE NUMBER TWO.

Decided December 4, 1936.

1. All cases appealed to this Court should ordinarily be brought up upon a bill of exceptions.
2. Although a Justice of this Court may have ordered the issuance of a writ of error or other remedial writ, neither the Court *en banc* nor the Justice is concluded thereby if, upon the hearing before the Court, it can be shown that said writ was improperly granted.

3. Hence, the burden of proof remains upon the applicant to show that his remedial writ has been properly granted.
4. Should the trial judge refuse to approve a bill of exceptions, the aggrieved party should apply to a Justice of this Court for relief by writ of mandamus.

Defendants-in-error moved on substantially identical grounds to quash writs of error obtained by plaintiffs-in-error under substantially identical circumstances. *Motions granted* and cases remanded for execution of judgment.

A. B. Ricks and *L. G. Freeman* for plaintiff-in-error in case number one. *T. G. Collins* for defendant-in-error in case number one.

T. G. Collins and *J. S. Toomey* for plaintiff-in-error in case number two. *S. David Coleman* and *W. V. S. Tubman* for defendants-in-error in case number two.

MR. JUSTICE GRIGSBY delivered the opinion of the Court.

The above entitled causes originated in the Circuit Court of the Fifth Judicial Circuit of the County of Grand Cape Mount and in the Provisional Monthly and Probate Court of Marshall Territory, Montserrado County, of the Republic of Liberia, respectively. At the call of each of the said cases for hearing as they were each reached on the docket before this Court, the defendant-in-error in each case had filed motions to quash the said writs of error prayed for by the plaintiffs-in-error respectively for the reasons:

"1. Because the privilege of removing cases to the Honourable Supreme Court of Liberia by writs-of-error arose by implication from section 7 on page 127 of the Judiciary Act found in the compilation of 1858–61 and from section 5 of the Act of 1875 and the Honourable Supreme Court of Liberia has definitely established and interpreted expressly the law under which and under what

circumstances the writ should be issued or obtained by any party applying therefor, particularly mentioned in the case *Wodawodey,* plaintiff-in-error, v. *Kartiehn,* et al., defendants-in-error, from page 105 of the New Annual Series number one of the Supreme Court Opinions, April term 1934, also in the case *A. D. Daniel* v. *Compania Trasmediterranea* on page 100 of said Opinions and Decisions quoted supra to wit: 'A remedial writ is an extraordinary remedy usually applied for in order to prevent an injury to a party that may be irreparable or without which the ordinary method of appeal may not give an adequate remedy.'

"Also *Logan* v. *Eugene Meyer,* a case decided May 10, 1915, by this Honourable Court that:

"'In consequence of the defendant-in-error maintains that plaintiff-in-error should have brought this case up to this Honourable Court upon a regular appeal in keeping with statutory provisions for there appears to be no good reasons to justify them in failing to pursue the ordinary method of appealing to this Honourable Court as provided by law.'

"And also because one of the prerequisites of taking an appeal is that of payment of costs incurred in the lower courts which is now being avoided ostensibly by resort to appeal procedure by writ-of-error, which course is not only denounced by the Honourable Supreme Court, but conflicts with the Statute law or Act of Legislature passed and approved January 23rd 1936. . . . Plaintiffs-in-error not having paid the costs of the lower court in negation to the said Act just cited are guilty of violation of the law in this respect which furnishes sufficient grounds for the quashing of the said writ-of-error as issued in their favor, which defendants-in-error pray to be quashed, and that the respective plaintiffs-in-error be ruled to payment of all costs."

The motions referred to *supra* each emboodied four counts, two of which have been voluntarily waived by the defendants-in-error; the first and second points therein as hereinbefore set out have been submitted for the Court's consideration. This Court would here remark that the granting of a remedial writ by an individual Justice to remove a cause from an inferior to a superior tribunal for further adjudication is not to be construed as to be binding upon himself or his colleagues when the cause is heard before the full Bench, unless the party applying therefor can prove that the procedure adopted by him is fully warranted by law, and that our opinions, based upon the statute and common law rules now in force in the Republic, have been strictly followed. Where for sufficient reasons it can be shown in the course of the hearing that the applicant has failed to surround his cause with the safeguards of the law, or has pursued an irregular course of procedure, the Court *en banc* may quash the same.

This Court has in unequivocal terms made a historical survey of how causes should be brought up to this Court to avoid any miscarriage by appellants of their appeals. All cases coming up to this Honorable Court should be commenced by a bill of exceptions in order that the judge may have notice of such portion of his rulings to which exceptions shall have been taken, and the exceptions so taken must be apparent upon the records. The said judge must affix his signature thereto; but in the event he arbitrarily refuses to affix his signature a mandamus may lie to compel him to so do; all of this must be applied for within the statutory time required by law, whether the mandamus be granted within such interval or not; and a failure to so do is tantamount to a waiver of the rights and benefits to which an appeal entitles him; for:

> "A remedial writ is an extraordinary remedy, usually applied for in order to prevent an injury to a party that may be irreparable, or at all events may not give an adequate remedy if the ordinary methods of bringing up

a case for review are pursued. . . ." *Daniel* v. *Compania Trasmediterranea,* 4 L.L.R. 99, 1 Lib. New Ann. Ser. 101 (1934).

This Court has further upheld the following principles of law to wit:

"'Where the right of appeal is expressly given by the Constitution in specific cases or classes of cases it cannot be abolished or impaired by statute; and where no mode of appeal is provided by the legislature, in such cases the appellate court may frame proper rules of procedure to bring the case before it. . . .'" *Wodawodey* v. *Kartiehn,* 4 L.L.R. 102, 106 (1934).

Because of the manifest irregularities which plaintiffs-in-error were not careful to avoid in pursuing their course by writs of error, directly in violation of the principles outlined historically as found in the citations above referred to, we are therefore of the opinion that the said writs should be quashed; and the respective trial courts be ordered to resume jurisdiction, and execute their respective judgments; and it is so ordered.

Costs in each case are hereby ruled against the plaintiff-in-error concerned.